IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 68 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VASHRAMBHAI PUNJABHAI HARIJAN

Versus

STAET OF GUJARAT

Appearance:

1. Criminal Revision Application No. 68 of 2003

MR BD KARIA for Petitioner No. 1-2

Mr S J Dave, APP for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 20/02/2003

ORAL JUDGEMENT

This is a revision application under section 397 read with section 401 of the Code of Criminal Procedure, 1973 (for short, 'the Code'), challenging an order dated

30.12.2002 recorded by the learned Addl.Sessions Judge, Dhangadhra, Surendranagar District below application Exh.48 in Sessions Case No.29/2000 under which the learned Judge dismissed the aforesaid application of the present petitioner requesting the Court to issue witness summons for proving the dying declaration.

2. It seems that after the close of evidence, further statements of the petitioners were recorded under section 313 of the Code. Thereafter the matter was placed for hearing of the argument and the petitioners being original accused in the aforesaid case, submitted application for admitting/exhibiting the dying declaration of the deceased and after hearing of the same, the trial court dismissed the said application. Thereafter the petitioners requested the trial court by the aforesaid application to issue witness summons to the Executing Magistrate for producing and proving the said dying declaration of the deceased. The trial court heard the parties and came to a decision that the application was filed very late and, therefore, it was dismissed.

3. It is this order which has been challenged before this court by way of this revision application. It is true that the petitioners did not state during the course of their further statement recorded under section 313 of the Code, that they wanted to examine the witness/es and they wanted to prove the dying declaration. However, when the statements were over and the matter was being argued, the above application below Exh.48 was submitted. It is true that the application was filed very late and ex-facie there is no full justification for filing the application late before the trial court. After all it is also true that such a decision is normally required to be taken by the Advocate defending the accused person before the trial court. It seems that the learned Advocate appearing for the petitioners before the trial court had taken such a decision little late. However, the dying declaration was produced on record at page 19. Considering the said document at page 19, I am of the opinion that the defence of the petitioners is likely to be adversely affected, if an opportunity is not given to the petitioners to examine the witness/es and to produce and prove the said dying declaration. At the same time, when delay has been caused by the petitioners and when the matter is likely to be further delayed, it would be in the fitness of things that the petitioner be directed to pay Rupees One thousand as cost to be deposited in the High Court Legal Services Committee.

4. I have heard the learned Advocate for the

petitioners and the learned APP. After hearing the learned Advocates for the parties, following order is passed:

This revision application is allowed. The order passed by the trial court dated 30.12.2002 below application Exh.48 in Sessions Case No.29/2000 is ordered to be quashed and set aside. The application of the petitioners for summoning witness/es is allowed. The trial court shall issue witness summons to the concerned witness/es in terms of the prayer made in application Exh.48 submitted by the petitioners before the trial court on condition that the petitioners shall pay cost of Rupees one thousand in the High Court Legal Service s Committee. Rule is made absolute. D.S. permitted.

20.2.2003 [D P Buch, J.]
msp